IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8524 of 1990
With
SPECIAL CIVIL APPLICATION No. 8523 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANBI HARJI RAMJI & 1 Anr. Petitioners
Versus
BAROT MURUDAN HAMIRJI - Respondent

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Appearance :
MR YS MANKAD for Petitioners No. 1 & 2.
MR PJ BHATT FOR MR JIVANLAL G SHAH for Respondent No.1.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/12/2006

ORAL JUDGMENT

1. This order shall dispose of Special Civil Applications No.8524 and 8523 of 1990.

2. By these two writ applications, the present petitioners Kanbi Harji Ramji and Kanbi Govind Ramji, both sons of

the respondent No.2 (since deceased) Kanji Ramji Ratna, have challenged the orders dtd.12/9/1983 passed in Tenancy Cases No.204 of 1980 and 211 of 1981, upheld in Appeals No.1 and 2 of 1984 by the Deputy Collector vide his orders dtd.16/2/1985 and confirmed by the Gujarat Revenue Tribunal by its orders dtd.25/3/1990 passed in Revision Cases No.21 and 21-A of 1985.

3. Short facts necessary for disposal of the present writ applications are that the respondent No.1 – Barot Murudan Hamirji had filed Civil Suit No.40 of 1974 seeking redemption of mortgage and a declaration that the sale deed dtd.9/12/1957 executed by Jashodabai in favour of the respondent No.1 was illegal, void and was not binding upon the plaintiffs. The original defendants raised various pleadings, they asserted that the sale deed dtd.9/12/1957 was in accordance with law, was valid and was with due consideration and the same could not be set aside. However, in the alternative, they submitted that on coming into force of Kutch Tenancy Act (w.e.f.13/12/1958) and Kutch Inam Abolition Act (w.e.f.31/12/1958), they had acquired status of occupant / tenant and under the circumstances, they being tillers, could not be ordered to be evicted from the

land. It was also submitted that the property was mortgaged by the erstwhile owner somewhere in the year 1903 with Swaminarayan temple and the said Swaminarayan temple executed sub-mortgage in favour of the defendants' Predecessor-in-title. It was submitted that on either of the counts, the suit was liable to be dismissed.

4. The trial court after considering the pleadings of the parties, observed that as the questions of Kutch Tenancy Act and Kutch Inam Abolition Act, were involved and as the exclusive jurisdiction is conferred upon the Mamlatdar, the question of tenancy should be first decided by the Mamlatdar. He accordingly referred the matter to the Mamlatdar. Both the parties appeared before the Mamlatdar, who, registered the above referred cases, after giving due opportunity of hearing to the parties, he came to the conclusion that the present petitioners or the respondent No.1 (since deceased) could not acquire the status of a tenant. The Deputy Collector, in appeal, came to the conclusion that as the sale deed dtd.9/12/1957 was executed prior to coming into force of Kutch Tenancy Act and Kutch Inam Abolition Act, the question of conferral of the rights by

the present petitioners would not arise. He, however, confirmed the order of the Mamlatdar. The Revenue Tribunal also held that the provisions contained in Kutch Tenancy Act and Kutch Inam Abolition Act would not be applicable as both the Acts came into force in December, 1958 i.e. much after the execution of the sale deed. He pointedly recorded that the question of conferral of right cannot arise in the case on hand but he also confirmed the order passed by the subordinate authorities.

5. Mr.B.Y. Mankad, learned counsel for the petitioners in each of the case submits that if the provisions regarding conferral of the rights under the Kutch Tenancy Act or the Kutch Inam Abolition Act were not applicable, then the Dy.Collector and/or the Gujarat Revenue Tribunal should have referred the matter back to the Civil Court simply holding that in view of the sale deed dtd.9/12/1957, the question of conferral of tenancy right on the said defendants would not arise for consideration.

6. It appears that the Dy.Collector so also the Revenue Tribunal fell in error in confirming the order passed by the Mamlatdar. The order passed by the Mamlatdar, in view of the findings recorded by the Revenue Tribunal / Dy.Collector cannot be allowed to stand. All the orders

impugned in these petitions are hereby quashed. The Mamlatdar is hereby directed to send to matter back to the Civil Court with a submission that in view of the execution of the sale deed dtd.9/12/1957, the question of conferral of rights under the Kutch Tenancy Act and/or Kutch Inam Abolition Act would not arise for consideration. He may also make a submission to the Civil Court that if the Civil Court holds that the sale deed in question is invalid or void or does not bind the plaintiff, then only the question of conferral of tenancy right would arise and the Civil Court after recording such a finding, may refer the matter back to the Mamlatdar. Both the petitions are hereby allowed. Rule is made absolute accordingly in each of the petition. No costs.

(R.S. GARG, J.)

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